

June 27, 2005

Comments on Proposed Rulemaking regarding the CAN-SPAM Act of 2003

Filed Electronically at <https://secure.commentworks.com/ftc-canspam/>

Proposal 1: Expand or contract the definition of the term "transactional or relationship message" under the Act "to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of [the] Act".

On page 6 of the FTC's Notice of Proposed Rules published May 12, 2005 ("Notice"), I found the following sentence particularly relevant:

The proposed Rule provides that ... sellers may structure the sending of the e-mail message so that there is but one "sender".

Rather than give spammers and their affiliates (also known as the spamvertised domains or spamvertised companies) the OPTION to structure the message as having one sender, they should be **REQUIRED** to structure the message this way. There should be only one responsible party for the service of process.

The sender's name and contact information should be clearly indicated in the body of the message, in fixed-width text no smaller than 9 point. Such information should be in text format only; images representing such text should be prohibited, since images cannot be searched and the text within them cannot be selected for easy copying and pasting into a document.

Until this requirement exists, recipients of spam have to parse each message to determine who to sue. In my situation, I have accumulated a total of 3,785 spam since May 19, 2005 alone. I have carefully reviewed 735 of those, and found 1,818 separate domains or companies that either generated the message or whose products or services were advertised in the message.

It is simply unacceptable for there to be no requirement that clearly states who I should sue. Given the numbers above, I would be required to serve, on average, nearly 2.5 defendants for each spam that I receive. This places an unfair burden and cost on me as a plaintiff, and on the judicial system.

Proposal 2: Modify the ten-business-day period prescribed in the Act for honoring a recipient's opt-out request.

In reality, no recipient of spam should have to opt-out of anything. CAN-SPAM is based on the faulty premise that opting in would be too burdensome to senders. In truth, the real burden has unjustly been shifted to recipients to opt out of all this spam, which they never wanted in the first place. Nonetheless, I understand this is not the issue at hand.

Despite CAN-SPAM's flawed approach, I agree that it would make sense to shorten the deadline to honor any opt-out request to one calendar day.

Everyone who sends spam does so hundreds-of-thousands or millions of messages per day. The same tools that enable such automation in the SENDING of these unwelcome messages should be required to process OPT-OUT REQUESTS within the same timeframe. One day should be plenty of time for them to stop spamming anyone who is foolish or naïve enough to actually respond to one of these message.

The only excuse for not shortening this period is to allow a spammer to spam the recipient as many times as they can get away within the ten days they have left to do so. This is simply unacceptable.

Proposal 3: Specify activities or practices as aggravated violations (in addition to those set forth as such in section 7704(b) of CAN-SPAM) "if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection [7704(a) of the Act]".

Each spam should clearly state one and only one sender, as noted above in my comments to Proposal 1. Each failure to do so should be prosecuted as an aggravated violation.

Each spam should also be required to clearly indicate the organization from which the spammer obtained each recipient's name and email address. In other words, the common spam disclaimer that asserts I 'subscribed or opted into to a mailing list operated by us or one of our partners' is entirely bogus and should be prohibited.

This information should be clearly indicated in the body of the message, in fixed-width text no smaller than 9 point. Such information should be in text format only; images representing such text should be prohibited, since images cannot be searched and the text within them cannot be selected for easy copying and pasting into a document.

By requiring spammers to 'fess up as to where they get the addresses on their lists, the FTC can introduce accountability into this mess – accountability that does not yet exist.

Under CAN-SPAM, address harvesting is illegal. If spammers are required to disclose to each recipient where they got that address, then the spammers will have to 'listwash', or purge their mailing lists in a significant way, to get rid of the many addresses which they obtained illegally or which have no known origin. The spammers will then have to build back up their database with addresses that have only been gathered through – allegedly – legitimate means. In the interim, spam volume would decrease.

This requirement would also create a fundamental balance in the spammer/recipient equation. Such balance has been sorely lacking for many years now.

Proposal 4: Issue regulations to implement the provisions of this Act".

Please also create the wording necessary to implement my comments to Proposals 1 and 3 as regulations themselves.

One final comment I would like to make:

I am opposed to the inclusion of Post Office Boxes and any other postal mail boxes such as those that The UPS Store or Postal Annex offers to the public. Any such mail drop address obscures the true location and identity of the spammer and should be forbidden.

Any attempt by a spammer to avoid prosecution should not be permitted. Obscuring the sender's physical address is one such de facto attempt. These addresses create an unjust burden on recipients who want to sue, since they have to go through extra steps to obtain the spammer's actual location in order to serve papers in a manner that is acceptable to any court of law.

Since a spammer has chosen to spam, s/he should not get any favorable treatment under the law. S/he should not be permitted to shield his/her true identity, physical location, or assets.

Thank you for providing this opportunity to comment on the FTC's proposed rules concerning the CAN-SPAM Act of 2003. Please feel free to contact me for any reason.

Kind Regards,

Sean Sowell

U.S. Citizen, California resident and registered independent voter

Owner, Twin-Dad
www.twin-dad.com
PO Box 12222
Pleasanton, CA 94588-2222

Cc California Senators Dianne Feinstein and Barbara Boxer